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# In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 63

JACOB REED'S SONS, INC., APPELLANT

*v.*

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

## BRIEF FOR THE UNITED STATES

### OPINION

The opinion of the Court of Claims in this case (R. 9 to 12) is reported in 60 Court of Claims 97.

### JURISDICTION

The judgment of the Court of Claims was entered on January 5, 1925. (R. 12.) A motion for a new trial was duly entertained and overruled on March 16, 1925. (R. 13.) A petition for appeal was filed March 31, 1925, and allowed on April 6, 1925. (R. 13.) Jurisdiction to allow and entertain such appeal is conferred by Sections 242 and 243 of the Judicial Code, which were in effect at

the time the appeal was taken, all of such action being prior to the taking effect of the Act of February 13, 1925. (Chap. 229, 43 Stat. 936.)

STATEMENT

This is a suit against the Government to recover damages for an alleged breach of contract, it being contended by the appellant that duly authorized officers of the Government agreed with appellant that if appellant would lease and equip certain premises in the city of Philadelphia as a plant for the manufacture of Army uniforms the Government would give to appellant contracts for the manufacture of uniforms in sufficient quantities to permit appellant to amortize the cost of the lease and equipment; it being also contended that as a result of said agreement appellant did lease and equip the factory, and that after the Armistice the Government cancelled existing contracts and failed to give any additional contracts, thereby preventing appellant from amortizing such cost, as a result of which appellant has suffered damage in the sum of $43,756.24. Appellant contends that this is a valid and binding contract, coming under the provisions of the Act of March 2, 1919 (Chap. 94, 40 Stat. 1272) (Dent Act).

The facts as found by the Court of Claims are as follows: The appellant is a corporation (R. 6), and prior to July 15, 1918, had been engaged in the manufacture of Army uniforms for the Government (R. 6). On such date appellant was

using as a cutting plant certain premises in Philadelphia, and was using three or four other premises, in which, after the cutting was done, the other work of the manufacture of the uniforms was completed. (R. 6.) Early in the summer of 1918 the situation generally with reference to the production of Army uniforms was critical, and it was necessary to immediately arrange to provide uniforms for four million men by July 1, 1919. (R. 6.) The manufacturing situation of such uniforms in the city of Philadelphia was very unsatisfactory to the Government. Production was not up to minimum requirements, contracts were scattered among many manufacturers, and there was much dishonesty, waste, and inefficiency. (R. 6.) Appellant, however, was regarded as one of the best contractors with which the Government was dealing. (R. 6.) In April, 1918, General Goethals, Assistant Chief of Staff, Division of Purchase, Storage and Traffic of the Army, having charge of the procurement of such supplies, assigned Benedict M. Holden, a civilian (and an able lawyer), as Depot Quartermaster at Philadelphia "to increase production and to eliminate dishonest and unsatisfactory contractors." (R. 7.) "As such depot quartermaster it was his duty and he had authority to do everything possible to expedite production of uniforms to meet the program which had been laid out for the United States Army." (R. 7.) By letter dated May 8, 1918, to appellant, signed by Capt. Weinberg as Assistant

to the Depot Quartermaster in Philadelphia, appellant was advised that by letter dated May 6, 1918, from the office of the Quartermaster General they had been instructed to have appellant take up with the office of the Depot Quartermaster in Philadelphia all matters pertaining to appellant's contracts, or any business that they might have with the Quartermaster Corps in reference to contracts, and that it would not be necessary for appellant to correspond with the Quartermaster General's office unless so advised. (R. 9.)

"Benedict M. Holden, Depot Quartermaster at Philadelphia, while acting as such was an agent of the Secretary of War." (R. 9.)

Holden urged appellant in every way to increase its production. He required all contractors to install storerooms at places where cutting was done in order that material belonging to the Government might be kept under lock and key. He also required one of appellant's places to be discontinued on account of the fire risk. (R. 7.) Appellant could not provide the storeroom at its cutting plant without decreasing production. The discontinuance of one place on account of the fire risk also would decrease production. The only way to meet these demands and to increase production would be to secure new quarters and concentrate the manufacture. Appellant, being desirous of complying with these demands of the Government, sought suitable space and ascertained that it could lease certain premises that were desirable and would permit the

increasing of production, the establishment of a new storeroom, and the abandonment of the plant discontinued because of the fire risk. This space could only be procured by executing a lease for three years and if procured it would require the installation of necessary and proper machinery. (R. 7.)

On or about July 15, 1918, the plaintiff (appellant) reported the above facts to Benedict M. Holden, Depot Quartermaster at Philadelphia, and stated to him that the taking over and equipment of the portion of the building at North Sixth Street would involve the expenditure of a considerable sum of money, and that it did not feel justified in going ahead without some definite assurances on the part of the depot quartermaster that it would receive a sufficient number of contracts to at least compensate it for the outlay and obligations which it would have to incur. The depot quartermaster wanted to know what it would cost to rent the portion of the building and to equip it. The plaintiff (appellant) told him that such a plant would cost from $75,000 to $100,000. The depot quartermaster urged the plaintiff (appellant) to increase its capacity and stated that he was satisfied that the plaintiff (appellant) would receive contracts from the United States Government sufficient to compensate it for making the investment. The plaintiff (appellant) suggested that the war might end. The depot quartermaster then said, " If the war stops, we will be obliged

to keep an army of occupation in Europe for some time to come, and this army of occupation will need uniforms." He further stated that contracts would be placed with the plaintiff (appellant) which would fully reimburse it for its proposed expenditure. (R. 7 and 8.)

Thereupon appellant executed the lease and equipped the plant. It was completed and ready for operation about the middle of September, 1918. It was inspected and approved by officers connected with the Philadelphia depot, both during construction and after completion. As soon as completed the Government immediately awarded contracts to appellant and said plant was used in the manufacture of uniforms until the date of the armistice, when appellant was ordered to stop manufacturing. Thereafter, although appellant was ready, willing, and able to devote said factory to the manufacture of uniforms and requested additional contracts, no further contracts were given to it. (R. 8.) After the armistice, appellant endeavored to have the Government take the factory off its hand and pay its losses. The Government failing to do so, appellant disposed of the same at a loss of $43,756.24. (R. 8.) Appellant filed its claim under the Dent Act with the Secretary of War. The War Department Claims Board found it was entitled to relief, but on appeal to the Secretary of War the claim was denied. (R. 8.)

> All matters connected with the origination, making, and performance of all contracts of the plaintiff (appellant) for the manufacture of uniforms were taken up with the depot quartermaster at Philadelphia, and plaintiff (appellant) had no dealings with regard to any of said contracts with any other official. All such contracts were executed on behalf of the Government by the officer designated in the contract as contracting officer and designated by the depot quartermaster at Philadelphia. (R. 9.)

Upon the above facts the Court of Claims held that there was no agreement by the Government to pay any losses that appellant might sustain in equipping this factory, and that if there was such an agreement it was beyond the authority of the officers of the Government to make the same, and that the Dent Act did not validate such agreement or extend the authority of the officers; that such Act only gave validity to agreements informally made, which agreements were within the authority and power of the officers to enter into.

### THE STATUTES

The pertinent portions of the Act of March 2, 1919 (Chap. 94, 40 Stat. 1272) are as follows:

> That the Secretary of War be, and he is hereby, authorized to adjust, pay, or discharge any agreement, express or implied, upon a fair and equitable basis that has been entered into, in good faith during the pres-

ent emergency and prior to November twelfth, nineteen hundred and eighteen, by any officer or agent acting under his authority, direction, or instruction, or that of the President, with any person, firm, or corporation for the acquisition of lands, or the use thereof, or for damages resulting from notice by the Government of its intention to acquire or use said lands, or for the production, manufacture, sale, acquisition or control of equipment, materials or supplies, or for services, or for facilities, or other purposes connected with the prosecution of the war, when such agreement has been performed in whole or in part, or expenditures have been made or obligations incurred upon the faith of the same by any such person, firm, or corporation prior to November twelfth, nineteen hundred and eighteen, and such agreement has not been executed in the manner prescribed by law * * *.

**ARGUMENT**

Upon the facts found by the Court of Claims two questions arise:

1. Was there any agreement by the Government, or officers thereof, to reimburse appellant for any losses it might sustain in leasing and equipping the factory for the manufacture of army uniforms?

2. If there was any agreement concerning the leasing and equipping of this plant, was such agreement within the authority of the officers who undertook to make the same?

Appellant in its brief has quoted parts of evidence which are not made a part of the findings of fact by the court below and has also made as an appendix to its brief parts of the findings of various War Department Claims Boards. The appendix also includes appellant's motion for new trial in the court below. None of these matters are included in the findings of fact, which are conclusive in this Court. These matters have no place in the presentation before this Court and are not a proper part of appellant's brief.

## I

### THERE WAS NO AGREEMENT

There was no promise by the Depot Quartermaster. The Government wanted an increase of production. The appellant could not increase production without incurring additional expense. Before doing so it wanted the best information which it could obtain as to the probability of being able to amortize such expense. The Government never *agreed* that it would either give appellant contracts, out of which it could amortize the same, or that it would reimburse appellant for such expenditures if they were not so amortized. The officers of the Government merely gave to appellant the knowledge which they then had concerning the probable requirements of the Government. They could not bind the Government to continue the war. They did not undertake to do so. They merely ex-

pressed their opinion that if the war continued, appellant would be given additional contracts, and that if it did not continue, there would be the need for army uniforms by the army of occupation. Upon the information and opinion so given, not upon any *agreement,* appellant invested the money upon the hope that it would be reimbursed by profits from future contracts. It took this chance, and it lost. The assurances so given to the appellant were too vague and general to be considered stipulations of a contract. It is evident that they were not made or received as such.

## II

### THE AGREEMENT CLAIMED WAS NOT WITHIN THE AUTHORITY OF THE DEPOT QUARTERMASTER

Appellant claims that the agreement was "that the plaintiff (appellant), at the request and insistence of the Depot Quartermaster, and upon his promise that contracts would be placed with plaintiff (appellant) which would fully reimburse it for the expenditure, rented and equipped a factory in which to perform Government contracts." (Appellant's brief, pp. 7 and 8.) At page 14 of its brief appellant states the promise or the contract to be the following: "The promise was that the Government would make sufficient use of the factory to amortize the cost thereof; that plaintiff (appellant) would be reimbursed for any loss." Assuming that there was such a contract, it would be invalid because it was not made by any officer au-

thorized by law to make it. The appellant claims that there was a contract by the Government to enter into future contracts. No officer of the Government has authority to bind the future action of himself or his successors in office with reference to the letting of contracts.

Section 3732, Revised Statutes, as amended by the Act of June 12, 1906 (Chap. 3078, 34 Stat. 240, 255), provided that "no contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year." The alleged agreement contemplated contracts by the Government looking far into the future, beyond the necessities of the current year, beyond the current appropriation Acts, and according to the findings of fact by the Court of Claims in the event that the war should end, it looked to the necessities of the army of occupation.

The following statutes are likewise to be considered:

> All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate

delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals. (R. S. Sec. 3709.)

Hereafter all purchases of regular and miscellaneous supplies for the Army furnished by the Quartermaster's Department and by the Commissary Department for immediate use shall be made by the officers of such Department, under direction of the Secretary of War, at the places nearest the points where they are needed, the conditions of cost and quality being equal: *Provided also*, That all purchases of said supplies, except in cases of emergency, which must be at once reported to the Secretary of War for his approval, shall be made by contract after public notice of not less than ten days for small amounts for immediate use, and of not less than from thirty to sixty days whenever, in the opinion of the Secretary of War, the circumstances of the case and conditions of the service shall warrant such extension of time. The award in every case shall be made to the lowest responsible bidder for the best and most suitable article, the right being reserved to reject any and all bids. (July 5, 1884, c. 217, 23 Stat. 107, 109.)

Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments, and posts of

> the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; * * *. (March 2, 1901, c. 803, 31 Stat. 895, 905.)

In the absence of war or other great national emergency, uniforms must be manufactured under contracts which are let on public bids. Nobody knew how long the war would last. The alleged agreement upon the part of the Government was not a contract for the purchase of uniforms but looked far beyond the needs of the current year, the needs of the war, and to the needs of the army of occupation. When the war ceased the usual mode of letting public contracts would be restored. Unless the appellant would submit the lowest and best bids the contracts could not then be let to it. It was beyond the power of any officer of the Government to agree to do so. The findings of fact do not show that Mr. Holden had any authority to make the contract which appellant alleges exists. In the absence of such a finding the appellant's case is not sustained. The facts as found do not show that the Depot Quartermaster had any authority whatever to agree to pay for leasing and equipping factories. He may have had authority to contract for the present manufacture of uniforms, but it is not contended that the breach of any such a contract is the basis of the present action. Author-

ity to contract for uniforms does not include authority to contract for the erection of factories at the expense of the United States.

It is a familiar principle of law that all officers of the Government are agents with limited authority and that all persons dealing with them are chargeable with notice of all such limitations. (*Hume* v. *United States,* 132 U. S. 406; *Whiteside* v. *United States,* 93 U. S. 247.)

It is quite clear under the decisions of this Court (See *B. & O. Railroad Co.* v. *United States,* 261 U. S. 592) that in order that relief may be granted under the Dent Act there must be, among other things, (1) a contract, express or implied, upon the part of the United States, and (2) such contract must have been made by officers with authority to enter into the same. There are other requisites under the Dent Act, but the two above mentioned are wholly lacking in this case. The Dent Act was designed to bring relief to those who had entered into contracts within the scope of the authority of the officers who undertook to make them, but which had not been executed with the required legal formality. (*B. & O. Railroad Co.* v. *United States,* 261 U. S. 592.)

Appellant contends that this case is within the authority laid down in *Price Co.* v. *United States,* 261 U. S. 179. The facts in the two cases are entirely different. In the Price case an agreement existed, which was within the authority of the officers who made it. In the case at bar there was

neither a contract nor authority of the officers to make any such contract as is claimed. The only question decided by this Court in the Price case was that the claimant was not entitled to recover its expenses in regaining its commercial business after the termination of Government work.

For the reasons above set forth it is respectfully submitted that the judgment of the Court of Claims should be affirmed.

Respectfully,

WILLIAM D. MITCHELL,
*Solicitor General.*
HERMAN J. GALLOWAY,
*Assistant Attorney General.*

NOVEMBER, 1926.

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